

# **EXHIBIT 5**

**From:** [Jared Bunker](#)  
**To:** [Benjamin Luehrs](#)  
**Cc:** [Knobbe.MasimoDE](#); [Palapura, Bindu A.](#); [Jack Phillips](#); [Greenfield, Leon](#); [Milici, Jennifer](#); [Kerri-Ann Limbeek](#); [Megan C. Haney](#); [Vote, Dominic](#); [Ford, Mark](#); [Jordan Malz](#); [Peter Magic](#); [Megan C. Haney](#); [Apple Masimo Service](#); [Moore, David E.](#)  
**Subject:** RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Apple's Responses to Masimo's First Set of Written Discovery - Follow Up on Letter and Conferences  
**Date:** Tuesday, June 13, 2023 3:34:12 PM  
**Attachments:** [Requests.DOCX](#)

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Ben,

I don't believe we have received a response to this. Please provide Apple's position tomorrow. We would like to resolve these issues or submit a motion for teleconference this week.

Sincerely,  
Jared

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

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**From:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Sent:** Tuesday, June 6, 2023 8:34 AM  
**To:** Benjamin Luehrs <[BLuehrs@desmaraisllp.com](mailto:BLuehrs@desmaraisllp.com)>  
**Cc:** Knobbe.MasimoDE <[Knobbe.MasimoDE@knobbe.com](mailto:Knobbe.MasimoDE@knobbe.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Peter Magic <[PMagic@desmaraisllp.com](mailto:PMagic@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>  
**Subject:** Apple v. Masimo (C.A. Nos. 1377/1378) - Apple's Responses to Masimo's First Set of Written Discovery - Follow Up on Letter and Conferences

Ben,

This email responds to and follows up on your May 26 Letter and our June 2 and June 5 conferences regarding Apple's responses to Masimo's first set of discovery requests.

**RFP 10.** Masimo maintains its request for severance agreements for the reasons discussed during our conference. You indicated that you would get back to us on this.

**RFP 15-17, 19, 21, 42-47, 49.** Masimo offered to narrow these requests. Masimo's proposed narrowing of these requests is outlined in the attached document. Please let us know promptly whether Apple agrees to produce in response to these narrowed requests.

**RFP 22.** As stated during our conference, Masimo believes it is entitled to documents from which Apple derives the content of any interrogatory responses, regardless of whether Apple decides to cite the document in its response.

**RFP 28-33.** As stated during our conference, Masimo believes Apple can reasonably identify documents containing statements that contradict Apple's allegations or contentions and should produce those documents.

**RFP 24.** Masimo maintains that its request seeks relevant information and is proportional. Masimo understands that Apple is refusing to search for and produce in response to this request.

**Rog No 1.** Masimo maintains that it is entitled to Apple's contention regarding the relevant field of art and level of ordinary skill in the relevant art or designer of ordinary skill in the art. *See, e.g., Jenny Yoo Collection, Inc. v. Essence of Australia*, No. 17-2666-JAR-GEB, 2019 WL 3453805, \*11 (D. Kan. Jul. 31, 2019). As mentioned previously, the Court encourages the parties to serve and respond to contention interrogatories early in the case. Moreover, Apple has prepared infringement contentions and is preparing invalidity contentions, which involve this very issue. Masimo is entitled to Apple's contention. Masimo understands that Apple is maintaining that its response is sufficient and will not fully respond to this request.

**Rog No. 3.** Masimo indicated that it intends to serve supplemental interrogatory responses by early next week and requested a date by which Apple will supplement its response to this interrogatory. Please promptly provide a date by which Apple will supplement its response.

**Rog No. 4.** Masimo maintains that it is entitled to (a) an identification of the products Apple contends are covered by each Asserted Claim, on a claim-by-claim basis; (b) a claim chart outlining Apple's basis for its contentions in (a); and (c) an explanation for Apple's position that each Apple Watch not identified in (a) is not covered by the Asserted Claims.

We look forward to your prompt response to the above.

Sincerely,  
Jared

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

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**From:** Benjamin Luehrs <[BLuehrs@desmaraisllp.com](mailto:BLuehrs@desmaraisllp.com)>

**Sent:** Friday, May 26, 2023 2:36 PM

**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>

**Cc:** Knobbe.MasimoDE <[Knobbe.MasimoDE@knobbe.com](mailto:Knobbe.MasimoDE@knobbe.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Greenfield, Leon

<[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Peter Magic <[PMagic@desmaraisllp.com](mailto:PMagic@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>

**Subject:** Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

Counsel,

Please see the attached correspondence.

Sincerely,  
Ben

**Ben Luehrs** | DESMARAIS LLP

230 Park Avenue | New York, NY 10169

T: (212) 808-2952 | M: (203) 962-6557

E: [bluehrs@desmaraisllp.com](mailto:bluehrs@desmaraisllp.com)

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